

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA 305 OF 2004

ANIL KUMAR GUPTA

VS

THE STATE OF WEST BENGAL

For the Appellant : Mr. Sumanta Ganguly, Adv.

For the State : Mr. Sharequl Haque, Adv.

Reserved on : 09.04.2026

Judgement on : 22.06.2026

Uploaded on : 22.06.2026

CHAITALI CHATTERJEE DAS:-

1. This is an Appeal filed against the Judgement and order dated 12.12.2003 passed by the Additional Sessions Judge, Fast Track Court, 1st Court, Asansol, Burdwan in Sessions Trial no. 19 of 2023 whereby convicting the appellant for commission of offence punishable under Section 376 of the Indian Penal Code, 1860.

Brief resume of the case

2. A complaint was lodged before the Office-in-charge, Asansol Police Station by the defacto complainant on 23.10.1998 against the present appellant for

commission of rape. It was alleged that the appellant was the friend of her elder brother and often visited their house with her elder brother. One day in the month of March he came to their house at about 3 PM when her parents were not present in the house and suddenly he grabbed her hand and pulled her into the room and had sexual intercourse with her. She started crying but the appellant assured her to marry which she believed and did not tell anybody. Since he promised to marry, they often had physical relationship and she became pregnant. While asking to marry her he used to take time and then she intimated the entire incident to her brother. Her parents called the appellant and he admitted everything and also agreed to marry her. The parents of the complainant/victim requested him to marry her immediately to save her from public disgrace but he started wasting time making various excuses and in this manner eight months passed away and the victim delivered a male child. As the appellant did not marry her she compelled to take legal recourse and filed the complaint against him.

3. On the basis of such complaint Asansol police Station Case No. 224/98 dated 23.10.98 under Section 376/493, IPC started against the appellant and after completion of the investigation the chargesheet was submitted against him. After commitment the matter went before the Additional Sessions Judge, Fast Track Court, Asansol and the charge was framed by the learned Court under Section 376 IPC and the contents of the same was read over and explained to the appellant who pleaded not guilty and claimed to be tried. Hence the trial commenced. The learned Trial Court after assessing the evidence adduced before the court by the prosecution witnesses and considering the submissions made on behalf of the prosecution as well as the defence Counsel passed the

order of conviction against the appellant. Hence the instant appeal. In this case the appellant is represented by the learned advocate engaged by Calcutta High Court Legal Services Committee.

Submissions

4. It is argued by the learned advocate that the victim was Hindi speaking minor girl but she mentioned her age in the year 2003 as 19 years. She informed her brother as stated in her written complaint was not examined. PW 1, a local resident was not examined by the police. It is further contended that it is difficult to believe that the maternal aunt who deposed as PW 2 never noticed the pregnancy of the victim and she was never examined by doctor before she gave birth to the child. Clear embellishment is apparent from the evidence adduced by the victim, and the scribe of the complaint was not examined. No statement of the victim was recorded under Section 164 of Cr.P.C. and nothing to support that she informed anybody that appellant intended to marry her. She could not say anything about the content of the complaint made by her since she did not write the complaint by herself. The local people raised protest against them of lodging false complaint. There was no seizure of wearing apparel and no document was filed regarding birth of the child. The appellant denied the allegations against him at the time of examination under Section 313 Cr.P.C. It is therefore argued that the prosecution miserably failed to prove the case beyond the shadow of all reasonable doubt and therefore the order of conviction passed by the learned Sessions Court is liable to be set aside.
5. The learned prosecution on the other and argued that the complaint manifests how the appellant committed such act and on the promise being made on the

part of the appellant. There was delay in lodging the complaint but the cause of such delay has been duly explained and later on compelled to lodge the complaint. More so the victim is an illiterate lady and unable to communicate properly and hence it was difficult on her part to initiate any action against the appellant. It is further argued that she failed to convince the appellant for marriage and hence delay and there was no talk of settlement as the appellant wasn't influential neighbour. The most importantly the victim was a minor knowing it fully well the appellant has exploited her to fulfil his lust. Therefore the appeal filed by the appellant is liable to be set aside.

Analysis

6. Heard the submissions of both the learned advocates. On careful consideration of the materials on record it appears that these seminal issue falls for consideration is whether the learned Sessions Court rightly passed the order of conviction against the appellant or not. In order to prove the charges the prosecution adduced as many as six witnesses including the victim. In this case the investigating officer who submitted the charge sheet was not examined. P.W. 1, Narayan Yadav denied of knowing any person by name as of the victim. P.W.2 Bina Sharma is the aunt of the victim and said that the incident happened about four years ago when accused used to visit their house and was in friendly terms with the victim. He used to roam with her but he suddenly committed rape upon her and assured to marry her. This incident was not reported by the victim and she became pregnant for eight months and in spite of her being pregnant for eight months they were not aware about her pregnancy. Suddenly she complained of stomach pain and went to the doctor for treatment when her pregnancy was informed. After that they took the

victim to Dr. Ratna Majhi who advised her to take her to hospital where she gave birth to a male child. After returning from the hospital the accused started assaulting the victim, then she went to the police station to lodge complaint and the local people gheraoed the police station and the ward commissioner was also present. No diary was recorded by the police station then she brought the victim to her house at her place and narrated the incident to Debu da and on his reference they went to the learned advocate Mr. Malay Ghatak who wrote a letter and then they came to the police station with such letter. The witness further informed that about hundred people assembled to the police station and the victim was slapped by someone and then she went to the DSP and thereafter only the police accepted the complaint. The learned advocate Moloy Ghatak who wrote the letter on behalf of the complainant to the police station retired from the case when the matter reaches to cross examination. From the cross examination it can be found that the witness came to learn about the incident from the doctor for the first time and prior to that she had no knowledge about the incident. The eldest brother went abroad from childhood and the parents are living with two sisters and one brother in their house. The witness said that excepting the doctor from whom she came to learn, she did not discuss with anyone else. The witness did not make any statement before the police. It further transpires that about 50 Persons from Dildernagar assembled at the police station who were the neighbours of the victim and they created trouble with them because they filed a false case against the appellant. The said people made allegations against the father of the victim to be responsible for the pregnancy. P.W3 Surendra Nath Guchait, the superintendent at Raiganj district hospital of North Dinajpur on

24.10.98 informed the O/C of Asansol (s) P.S and the logbook of delivery cases was verified and it was found that the mother as the victim, the name of the attendant Shankar Sharma aged 19 years, address Dildarnagar ,Asansol , date of admission 7th October, 1998, date of delivery, 9.10.19 98 of a male living child. The witness could not say who was present on duty and who attended the patient first at the time of admission on 7.10.1998. He could not say anything what was prescribed by the doctor without consulting B.H.T.

7. P.W. 4 is the victim lady who deposed that the incident took place about five years ago and the appellant used to come to their house regularly. One day he came to her shop and took her from the shop to inside the house and forcibly committed rape on her, Later assured her to marry and the victim did not shout. Thereafter they started mixing with as husband and wife and she conceived but the accused did not marry as promised. After she became pregnant also he delayed and told her to marry her later on and she gave birth to a male child in the hospital. The accused did not even come to hospital to see her. She lodged a complaint against the accused written by Shambhu Nath Sarkar. She did not know Bengali language and the F.I.R was written as per her instruction and then it was read over and explained to her and she put her signature. In her cross-examination she could not tell the date of incident excepting that it happened in the month of March 1998. Her grandparents, two brothers and two sisters and her parents used to live in the house at the relevant day. During absence of other members she used to sit in the shop. She could not tell the name of the shop owners surrounding their house. According to her she was a student at the time of incident but could not say whether she went to the school on that day or not. In her cross-examination

also she said that she could not cry as the accused put his hand on her mouth. She could not say where family members went on the relevant day and also when they returned. She did not say anybody that the accused came and told her to marry. She did not raise any hue and cry during incident.

8. She admitted in her cross that her mother told the police that the accused married her at kali temple at Dildar Nagar as she told this to her parents. She also told the police that she had sexual intercourse with the appellant on several occasions thereafter. Her mensuration stopped after March, 1998 but she did not tell her parents when she started mensurating. She told the incident to the doctor when they went to the doctor after pregnancy but the doctor did not prescribe any medicines to her. She informed the police after birth of the son about the entire incident. She could not say whether the neighbour's created any trouble with her parents went to report at the police station. She denied the suggestion that her father was responsible for the pregnancy or for that reason the local people created the dispute. She denied that after that herself and her parents forced to leave Dildar Nagar. She could not produce any document regarding the birth of the child. It is seen from her deposition that her brother J.N Sharma had been living at Bombay since last five years when she deposed. She could not produce any certificate to show her age and stated her age to be 19 years while adducing evidence that is on 25th day of August, 2003. The victim lady was working at Delhi while she deposed before the court and she admitted that she loved accused truly who brought her to the Court. P.W. 5, Smt. Kamala Devi, the mother of the victim deposed that accused was friendly with her elder son Jitendra Sharma and used to visit their house. On return from her work (she used to work as domestic help) she

often found the accused in her house and she rebuked the accused for visiting her house during her absence. After some time her daughter complained of pain in abdomen and then she took her to the doctor who after examining informed about her pregnancy. Then they called the accused to inform them to marry their daughter. Later she got admitted in S.D. Hospital where she delivered a male issue and after that when she and her daughter alongwith the child entered into their house the accused person with others created lafda (troubles). They somehow saved themselves and escaped to take shelter in the house of the sister-in-law Bina. The accused sent about 10 people to attack them and they were saved by Debu and local people. She could not say the birth year of her daughter or the date month or year when she rebuked the accused. She did not inform the police that she rebuked the accused for visiting her house in her absence. It can be found from her cross-examination that when she lodged the complaint against the accused all their neighbours created trouble but she could not tell the reason. She denied the suggestion put to her that her daughter got pregnant because of her father and that is the reason why they created trouble. She also deposed that her daughter informed her that she married the accused person at kali temple and they did not agree to the said marriage. She did not file any case against the said marriage. She did not witness any incident between the accused and her daughter but she came to learn from her daughter. She never saw her daughter roaming around with the accused person. She also did not inform the police that they were surrounded by the people and Debu saved them. She did not know about the pregnancy of her daughter prior to the examination by the doctor.

9. Therefore from the above nature of evidence adduced by the victim as well as the family members apparently disclose that the mother was informed by the daughter being the victim about the marriage of her with the accused at Kali temple. The content of the complaint are found to be different than the evidences adduced by them. The evidence of the doctor P.W 3 reveals that she gave birth of a male child at Asansol district hospital on 9.10.1998. It is also apparent that after delivery of the child when the victim went to the police station to lodge a complaint an agitation held by local people for that she had to be shifted to the house of her aunt at upper Chellidanga Mohan Khattera Lane, Asansol. The Doctor Ratna Majhi did not adduce evidence, and Debu da who alleges to have saved them from the agitation of local people against them was not cited as the witness. The I.O in this case seized two discharge certificates given to him by the V.G. and she was treated in S.D. hospital from 7.10.98 to 12.10.98 and from 14.10.98 to 16.10.98 but nothing can be found to have been seized from the hospital. This IO did not submit the chargesheet and he investigated the case up to 23.10.1998. The age of the victim is found to be disputed as she claimed to be a student at the relevant point of time in the year 1998 but no document was found to substantiate the same. No evidence can be found regarding the date of birth of the victim and/or even the birth of the child. Though medical paper reveals the age as 19 years in the year 1998 which means at the time of adducing evidence her age ought to have been 23 to 24 years but the victim herself said that she was aged about 19 years on the date of adducing evidence and was of 14 years while such incident took place. According to the evidence of the investigating officer he made a prayer to the superintendent of the hospital for the ossification test of

the VG and also for medical examination of the accused person but thereafter on transfer he made over the case to the o/c Asansol who was not examined. No ossification report filed.

10. The medical examination of the V.G. was held on 24.10.98 after lodging the complaint. The I.O did not examine any of the local people whose houses are shown in the sketch map or any person who shown agitation. The accused during his examination under section 313 of Cr.P.C. denied to have in relation with the victim lady and is said that a false allegation has been levelled against him. He also stated that the entire locality was aware about the pregnancy of the victim and that her father was responsible for her pregnancy. The father was not examined in this case. No reason could be assigned as to why such agitation was shown but it can be found from the evidence of the aunt P.W 2 that since they lodged a false complaint against the accused such agitation was shown. The learned Sessions Court observed there were few minor discrepancies in the evidence of prosecution witnesses but that can be ignored in the light of decision of Hon'ble Supreme Court in **State of Rajasthan versus Kalki**¹ The learned Court considered the evidence of the victim and that the delay in filing the F.I.R should not be treated with suspicion considering the decision of the Hon'ble Supreme Court in the case of **State versus Gurmeet Singh**².

11. It is settled proposition of law that solitary testimony of the prosecutrix could be sufficient to base the conviction as observed by the Hon'ble Supreme Court

¹ 1981 Cri. L.J. 1012.

² AIR 1996 SC 1393

in **State of Himachal Pradesh vs. Manga Singh**,³ in paragraph 11 it was held:-

“The conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. The conviction can be based solely on the solitary evidence of the prosecutrix and no corroboration be required unless there are compelling reasons which necessitate the courts to insist for corroboration of her statement. Corroboration of the testimony of the prosecutrix is not a requirement of law; but a guidance of prudence under the given facts and circumstances. Minor contractions or small discrepancies should not be a ground for throwing the evidence of the prosecutrix.”

12. In the instant case in the complaint the allegation of commission of rape was levelled against the accused by the victim herself, admitted in her evidence that she informed her mother about their marriage at a kali temple which was corroborated by the mother before the Court and this fact primarily supports the contention that they were in a relationship. It can be found from the evidence that the mother of the victim used to work as a domestic help and she often found the appellant in her house for which she rebuked the accused but he continued to visit their house in her absence. The entire chain of circumstances clearly demonstrate the helpless condition of the victim, who was barely 18-19 years of age at the relevant time. She was neither mature enough nor prepared

³ (2019) 16 SCC 759

to face the consequences that followed when the appellant ultimately refused to marry her. Weighing to social stigma and fear she could not disclose the incident to her parents until she had reached an advance stage of pregnancy when she delivered a child. The appellant even continued to assure the victim to marry till she gave birth to the child. It was only when the appellant finally resiled from his promise that victim was compelled to lodge the complaint. Significantly after the complaint was instituted an allegation was sought to be levelled that the victim's own father was responsible for her pregnancy, a defence which appears to have been raised as an afterthought to discredit the prosecution case and tarnish the reputation of the victim and her family. The entire circumstances manifest the helplessness condition of the victim who might not be prepared for the subsequent consequences after the appellant delayed the marriage and the victim's inability to divulge before her parents till she reached at her advanced stage of pregnancy and even during birth of the child the appellant continued with his assurance to marry her which lastly he refused and the victim was assaulted when she returned with the baby. If this circumstances is considered along with the situation where the local people raised agitation causing hindrance to lodge a complaint against the appellant makes the situation worst when another narrative emerges raising finger against the father of the victim.

13. The prosecution did not make any effort to cite said Debu as a witness who allegedly saved the victim, her mother and her aunt from the agitation made by the local people against them in order to substantiate the exact reason of such agitation. Neither the defence made an attempt to negate the allegation of

paternity with a prayer for DNA test. It is evident from the testimony of the victim that even though the brother of the victim was out of station the appellant being the friend of the brother often visited the house of the victim despite he was rebuked by the mother of the victim and this fact is not negated by putting any suggestion and hence it is glaringly visible that the appellant visited the house taking advantage of the absence of the family members. Though the brother of the victim left the house. The age of the victim is disputed and though the I.O. prayed for ossification test but no such report was placed before the court. The victim said she was aged about 14 years but her mother could not say the year of birth of the victim. The only document is the hospital paper at the time of delivery of the child wherefrom the age can be found as 19 years if such document is to be relied upon it would suggest the victim in all possibility did not cross 18 years. The overall circumstances suggest that the appellant got the access to come to her house being the friend of the elder and she was very young and with the assurance of the appellant she became an easy prey. The ignorance about the pregnancy of their daughter till her advance stage of pregnancy by the family members reflects about apathy regarding the well-being of their daughter. The appellant has flatly denied the paternity and the separate narrative emerges raising finger toward the father of the victim which this court is also unable to agree in absence of any cogent evidence. There are certain minor discrepancies found from the close scrutiny of the evidences which are not sufficient to discard the allegation levelled against the appellant. There were agitation of the local people for which the victim even had to shift her place of residence, and serious allegation was levelled against the father being responsible for her pregnancy which is absolutely not proved. The victim during

her evidence withstand the cross examination and stick to her stand that the appellant initially raped her but assured to marry her for which they had sexual relations for quite long beyond the knowledge of their family members and she got pregnant.

14. Merely because no case of assault was disclosed by the appellant as narrated by the Aunt happened after birth of child do not dilute the seriousness of the offence and it is evident that the complaint was lodged after birth of child. No bed head ticket of the hospital was collected by the I.O and excepting the log book delivery case of the hospital no document was collected by the I.O. regarding the birth of the son, but the said log book did not disclose the name of the father of the child .No statement of the victim was recorded under Section 164 Cr.P.C.. The second I.O was not examined who submitted the charge-sheet. The manner in which the investigation was conducted clearly manifest the lackadaisical attitude on the part of the investigating authority either being influenced by the appellant and local people or due to negligence but it would be travesty of justice if the offence like rape is ignored only on the ground of faulty investigation . Whether the victim girl failed to recollect the destination where all of her family members gone on the alleged time of incident itself also will not demolish the case of the prosecution .It further transpires that since the police refused to lodge any complaint the de facto complainant had to go to Mr. Malay Ghatak, the learned Advocate, referred by Debuda and with his letter they went to lodge the complaint. Mr. Ghatak later on retired from the brief at the time of cross examination. It is a fact the victim could not say the specific date of incident but she gave the tentative month and time when the incident first took

place. It is an admitted fact that a romantic relationship between the parties developed subsequently and the of tender age engaged in physical relationship but the appellant later not only denied about such relations but also denied the paternity. The specific question was put to the victim on behalf of the defence counsel regarding the involvement of the father which she denied. The victim specifically deposed the time of incident around 3 pm when no one was playing in the field when the appellant forcefully took her inside from the shop and also applied force by putting her mouth shut and committed rape without her consent but she did not inform her family members as he assured to marry her. The victim even informed her mother about their marriage in kali temple which further corroborates that how much she was convinced about her marriage. The discharge certificates as handed over to the I.O. by the victim and seized were not placed before the Court.

15. In the decision of **State vs Gurmeet Singh**⁴ which was relied upon by the Learned Sessions Court is once again reiterated where it was held-

“It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person’s lust and it is improper and undesirable to test her evidence with a certain amount of suspicion ,treating her as if she were an accomplice .Inferences to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty.”

16. Therefore while discouraging the court to test her evidence with suspicion it was held to draw the inference from the given set of facts and circumstances

⁴ AIR 1996 SC 1393

with realistic diversity and in this case on careful consideration of the entire set of facts and circumstances this court do not find any illegality or improbable reasoning assigned by the learned trial court while passing such order of conviction. In the case of **Pramod Suryabhan Pawar v. State of Maharashtra**,⁵ the Hon'ble Supreme Court has enumerated the following:

“18. To summarise the legal position that emerges from the above cases, the “consent” of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual

As per Sec 90 of IPC when consent is obtained under a misconception of fact the consent is not true consent. In the **State (Govt. of NCT of Delhi) vs. Pankaj Choudhary & Ors.**⁶ it was observed and held by the Supreme Court that if credible, conviction of the accused can be based of sole testimony of the prosecutrix without corroboration. Further, it was held that sole testimony of the prosecutrix by the Court merely on the basis of assumption and surmise.

17. In the present case, firstly the victim was not major and her mother used to earn livelihood by working as domestic help. The appellant initially applied force and raped her without assurance to marry her and she did not shout or inform and later on in a kali temple they got married and hence subsequent

⁵ (2019) 9SCC 608

⁶ (2019) 11 SCC 575

sexual relations on several occasion were conscious and after she became pregnant. The appellant still maintained such relationship with false promises to marry and delayed the marriage and lastly when she delivered the child he refused to marry her and further denied the paternity. No prayer for DNA test was ever made on behalf of the accused challenging the same. No neighbour adduced evidence supporting the allegation levelled against the father .The appellant appears to be influential person since the police refused to accept the complaint and the police stations was surrounded by a mob of 50 or more than that and lastly the victim had to be shifted to her maternal aunt's house. Therefore it is apparent that the very inception the accused never intended to marry her and only to fulfil his last promised to marry her.

18. So far the testimony of the maternal aunt who is an illiterate lady and said that the local people protested as they went to lodge false complaint has been dealt with by the learned court that double question were merged into one and she only answered affirmative and being an illiterate and hindi speaking lady could not give the answer properly. It is undisputed that it is the Learned Trial Court who could see the demeanour of the witnesses during trial and hence any such observation when made should be given weightage unless found grossly improbable, while scanning the evidence coupled with the fact and situation of the specific case.

Conclusion

19. Therefore, summing up this Court after giving anxious consideration to the entire facts and circumstances the Court do not find any reason for which the order of conviction to be set aside. It is settled proposition of law that

corroboration is not a *sine qua non* in sexual offence if the evidence of the victim inspires confidence and in this case the victim throughout withstand the cross examination. Accordingly, this Court is of the view that the judgement and order of conviction needs no interference.

20. Hence the Criminal Appeal being 19 of 2023 is hereby dismissed. All connected applications are hereby disposed of.

21. The Judgement and Order of conviction passed by the Learned Trial Court is hereby affirmed. Bail bond executed by the Appellant shall stand cancelled.

22. In this case the incident happened prior to 2017 when Section 357A was incorporated after amendment of Cr.P.C but being a victim of sexual assault she must not be deprived of such opportunity since the provision was not incorporated.

Hence in the order it was not reflected excepting to pay the fine amount under Section 357 Cr.P.C. Therefore the member Secretary of State Legal Service Authority will take appropriate step to ensure that the victim can avail the benefit of the scheme.

23. Let a copy of the judgement along with T.C.R. be sent down forthwith to the concerned court for information and taking appropriate action.

24. Urgent certified copy of the Order, if applied for, be provided to the parties upon observance of all necessary requirements.

[CHAITALI CHATTERJEE (DAS), J.]